

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

<b>IN THE MATTER OF:</b>	)	<b>Administrative Cause</b>
	)	<b>Number: 15-078G</b>
<b>READOPTION OF 312 IAC 16, OIL</b>	)	
<b>AND GAS, AND 312 IAC 17, OTHER</b>	)	<b>(LSA Document #15-224(F))</b>
<b>PETROLEUM REGULATION</b>	)	

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE**

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 16, which establishes standards associated with the drilling, deepening and operating of wells for oil and gas purposes. This article assists with the implementation of IC 14-37 (Oil and Gas). Also for consideration is the readoption of 312 IAC 17 that establishes standards associated with prospecting, exploring and drilling wells for petroleum. This article assists with the implementation of IC 14-38 (Other Petroleum Regulation). 312 IAC 16 and 312 IAC 17 can be accessed through the Indiana General Assembly's website at <http://www.in.gov/legislative/iac/T03120/A00160.PDF>? and <http://www.in.gov/legislative/iac/T03120/A00170.PDF>?, respectively.

If rules are readopted in their current form without amendments under 312 IAC 2-2-4(b), the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on June 12, 2015. The standard practice is to readopt rules by article, and 312 IAC 16 and 312 IAC 17 are now submitted for consideration as to final action.

**B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5**

James AmRhein (*AmRhein*), Assistant Director of the Division of Oil and Gas, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided

the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 16:

REVIEW UNDER IC 4-22-2.5-3.1

**The continued need for the rule.**

The rule is necessary for the continued implementation of the regulatory programs administered by the Department of Natural Resources, Division of Oil and Gas, authorized under the statutory authority of IC 14-37.

312 IAC 16-1; Definitions - provides definitions with applicability to IC 14-37 and 312 IAC 16.

312 IAC 16-2; General Provisions - addresses general provisions which include preparation of forms required under this article and the manner in which informal hearings may be requested and conducted.

312 IAC 16-3; Permits – Requires permits be obtained for certain purposes and also establishes permit application requirements. The rule also addresses permit duration, the permit transfer process and outlines the requirements for revoking permits.

312 IAC 16-3.5; Annual Well Fee – This rule provides the well fee assessment amount and reporting requirements.

312 IAC 16-4; Bonding in Addition to Annual Well Fee – Establishes when additional bonding is required, bond types and bond amounts accepted by the division, when bonds can be released, and the provides for the forfeiture or cancellation of a bond.

312 IAC 16-5; Performance Standards and Enforcement – governs the location and spacing of wells, drilling unit sizes, provides protection of coal resources, determines criteria for well construction, provides criteria for general well maintenance, establishes the criteria for conducting mechanical integrity tests, outlines reporting requirements, describes the manner in which a well must be plugged and abandoned, addresses the manner in which an operator may obtain a temporary abandonment authorization, and establishes the requirements for issuing and appealing notices of violation and civil penalties. The rule also provides for requirements for spills, spill containment and soil remediation caused by the release of oil or saltwater.

**The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.**

The nature of complaints from landowners:

- Wells can sit idle for many years because of the TA rule
- The length of time it can take for enforcement action to escalate
- Spacing requirements for Trenton field wells too lax and many some have concerns that “their” gas might be taken from them.
- Landowners have expressed concern that hydraulic fracturing may cause their drinking water to become contaminated.
- Orphaned wells remain on landowners properties for years and may never get plugged and abandoned.

The nature of complaints from small businesses:

- That long string casing must have cement circulated to the surface

- Surety bonds are difficult to obtain
- The method for determining coal seams identified for plugging protection usually not understood
- That vegetation on firewalls is considered a fire hazard
- Rain water that collects inside of firewalls must be properly disposed of into tanks or a Class II well

**The complexity of the rule, including any difficulties encountered by:  
(A) the agency in administering the rule; or**

The division has administered this rule for several years and consequently, experience very few difficulties in actually managing programs governed by the regulation. Although the rule is quite complex, the division employs staff with experience and specialized knowledge required to properly administer this rule.

**(B) small businesses in complying with the rule.**

Since this rule has been in effect for several years, small businesses generally have a good understanding of the rule and rarely encounter difficulties following division regulations. However, weather and ground conditions, as well as crops in and around wells and facilities, can sometimes preclude small business owners from complying with enforcement issues but fortunately, these issues are usually resolved by closely communicating with division personnel.

**The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.**

This rule only slightly overlaps or duplicates other federal or state laws. The division works closely with the Indiana Department of Environmental Management (IDEM) in regards to spills, spill reporting, and remediation. The division has entered into a Memorandum of Understanding with IDEM concerning these spill issues so that the agency with regulatory authority can be determined.

The division received primary enforcement authority from the USEPA in 1991 concerning Class II wells. For these types of wells, 312 IAC 16 generally mirrors the EPA rule except in certain instances where the state has chosen to be slightly more restrictive.

**The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.**

The division continually reviews 312 IAC 16 as a matter of business and to ensure its overall effectiveness. The rule was re-authorized in 2010.

Drilling technology and computer technology have improved in such a way as to allow more oil to be produced from fewer boreholes, which in turn reduces the environmental footprint. Economic conditions have improved to the point that many old stripper wells which were once thought to be of little to no value, have now become financially viable.

REVIEW UNDER IC 4-22-2.1-5

**The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared**

Factors analyzed by DNR for Rule 312 IAC 16 have not changed since the previous economic impact statement was prepared.

**Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)**

No regulatory flexibility analysis of alternate methods was conducted by DNR to statutory requirements set forth in IC 14-37.

**Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements**

No regulatory alternatives were considered by DNR due to the statutory requirements set forth in IC 14-37.

AmRhein provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 17:

REVIEW UNDER IC 4-22-2.5-3.1

**The continued need for the rule.**

The rule is necessary for the continued implementation of the regulatory programs administered by the Department of Natural Resources, Division of Oil and Gas, authorized under the statutory authority of IC 14-38.

312 IAC 17-1; This section provides for the Administration of the Exploration for, and Production of, Oil and Gas from Public Land, and specifically addresses;

- definitions with applicability to IC 14-38 and 312 IAC 17-1.
- Classification of public lands for exploration or leasing purposes
- Permit applications and public notice requirements
- Protection of private rights
- Bonding
- Competitive bidding process
- Unitization of state lands for common development, exploration and operation
- the extent of development of an oil and gas field
- Royalties and rental fees

312 IAC 17-2; Test Holes for Fluid Disposal Investigation, Engineering Projects Investigation, and Geologic Investigation. This section governs the following:

- definitions applicable to IC 14-38 and 312 IAC 17-2
- General provisions which include the drilling, operation and bonding of test holes
- Prevention of waste
- defines the agency and division which administers the rule
- Addresses inspection powers
- Bonding
- Informal Hearings process
- Plugging and abandonment of test wells
- Protection of other commercial minerals

**The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.**

The nature of complaints from landowners:

None have been received since the last re-adoption of 312 IAC 17.

**The complexity of the rule, including any difficulties encountered by:  
(A) the agency in administering the rule; or**

The division has administered this rule for several years and consequently, experience very few difficulties in actually managing programs governed by the regulation. Although the rule is quite complex, the division employs staff with experience and specialized knowledge required to properly administer this rule.

**(B) small businesses in complying with the rule.**

Because the rule has been in effect for many years, small businesses have learned to follow the requirements when leasing public lands or applying for test hole permits. Compliance or difficulties with the rule is generally not an issue.

**The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.**

There are no overlapping or conflicting rules at the local, state, or federal levels.

**The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.**

The division continually reviews 312 IAC 17 as a matter of business and to ensure its overall effectiveness. The rule was re-authorized in 2010 and no changes have been made to this rule since that time.

**REVIEW UNDER IC 4-22-2.1-5**

**The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared**

Factors analyzed by DNR for Rule 312 IAC 17 have not changed since the previous economic impact statement was prepared.

**Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)**

No regulatory flexibility analysis of alternate methods was conducted by DNR to statutory requirements set forth in IC 14-38.

**Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements**

No regulatory alternatives were considered by DNR due to the statutory requirements set forth in IC 14-38.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Financial Management Circular 2013-

01 restated these requirements and added compliance information. On May 2, 2013, the Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget, and the Legislative Council on July 23, 2015. In a September 10, 2015 letter the Director of the State Budget Agency recommended the proposed rule readoption be approved.

**C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION**

On July 22, 2015, the “Notice of Intent to Readopt” 312 IAC 16 and 312 IAC 17 was posted to the *Indiana Register* at 20150722-IR-312150224RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 16 and 312 IAC 17 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 10, without amendment, for subsequent filing with the Publisher.

Dated: September 10, 2015

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Sandra L. Jensen  
Hearing Officer